

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN QUACH, et al.,
Plaintiffs,

v.

CITY OF NOVATO, et al.,
Defendants.

Case No. 16-cv-00121-DMR

**ORDER RE: PLAINTIFFS'
APPLICATIONS TO PROCEED IN
FORMA PAUPERIS; DISMISSING
CASE WITHOUT PREJUDICE FOR
FAILURE TO PROSECUTE**

Re: Dkt. Nos. 26, 27, 28, 29, 30

On June 23, 2016, the court issued an order granting Plaintiffs John Quach, Tug Tin Mathesius, Max Mathesius, Jacqueline Cao, and minor S. C.'s (collectively "Plaintiffs") applications to proceed *in forma pauperis*.¹ June 23, 2016 Order [Docket No. 17]. The court also reviewed the Plaintiffs' complaint pursuant to 28 U.S.C. § 1915(e)(2) and dismissed the complaint with leave to amend by July 7, 2016.² *Id.*

On July 5, 2016, the Plaintiffs filed new applications to proceed *in forma pauperis*. [Docket Nos. 18, 19, 20, 21, 22.] The court explained that, because the Plaintiffs' prior

¹ Because the court has already granted the Plaintiffs' application to proceed *in forma pauperis*, the court will not consider the new applications to proceed *in forma pauperis* filed by Plaintiffs on July 5, 2016. [Docket Nos. 18, 19, 20, 21, 22.]

² Plaintiffs have filed consent to magistrate judge jurisdiction. [Docket Nos. 12-15.] A magistrate judge generally must obtain the consent of the parties to enter dispositive rulings and judgments in a civil case. *See* 28 U.S.C. § 636(c)(1). However, in cases such as this one, where the Plaintiffs have consented [Docket Nos. 12, 13, 14, 15] but not served the defendants, "all parties have consented pursuant to 28 U.S.C. § 636(c)(1)," and a magistrate judge therefore "may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case." *Gaddy v. McDonald*, No. CV 11-08271 SS, 2011 WL 5515505, at *1 n.2 (C.D. Cal. Nov. 9, 2011) (quoting § 636(c)(1)) (citing *United States v. Real Property*, 135 F.3d 1312, 1317 (9th Cir. 1995)); *Third World Media, LLC v. Doe*, No. C 10-04470 LB, 2011 WL 4344160, at *3 (N.D. Cal. Sept. 15, 2011)); *see also Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995) (holding that magistrate judge had jurisdiction to dismiss action as frivolous without consent of defendants because defendants had not yet been served and therefore were not parties).

1 applications to proceed *in forma pauperis* had been granted, the court would not consider the new
2 applications to proceed *in forma pauperis* filed by Plaintiffs. July 6, 2016 Order [Docket No. 24]
3 at 1 n.1.

4 Plaintiff Max Mathesius also filed a document entitled "Statement: Testimony," a
5 document entitled "Amended Statement," and what appears to be a form from the Marin County
6 Sheriff's Office for Evidence/Property Record. [Docket No. 23.] The court found that the
7 documents were insufficient to constitute an amended complaint because they did not set forth the
8 claim for relief and the facts showing that the Plaintiffs are entitled to relief as required by Federal
9 Rule of Civil Procedure 8(a). July 6, 2016 Order at 2. The court explained to Plaintiffs that their
10 original complaint had been dismissed in its entirety and that if they wished to file an amended
11 complaint they must include each claim, the facts supporting that claim, and specify the
12 involvement of each defendant. *Id.* The court referred Plaintiffs to the resources for pro se
13 litigants on the court's website and to the Court's Legal Help Centers for unrepresented parties
14 and extended the Plaintiffs' deadline to file an amended complaint from July 7, 2016 to July 20,
15 2016. The court explained that failure to file a timely amended complaint could result in a
16 dismissal of the action without prejudice for failure to prosecute the case.

17 On July 19, 2016, the Plaintiffs again filed applications to proceed *in forma pauperis*, but
18 did not file an amended complaint. [Docket Nos. 26, 27, 28, 29, 30.] As explained previously, the
19 court has already granted the Plaintiffs' applications to proceed *in forma pauperis*. Plaintiffs did
20 not file an amended complaint.

21 Both the June 23, 2016 and July 6, 2016 Orders stated that failure to timely amend the
22 complaint could result in dismissal without prejudice for failure to prosecute the case. [Docket
23 Nos. 17 at 11, 24 at 3.] Plaintiffs did not file an amended complaint by July 20, 2016.
24 Accordingly, this matter is hereby dismissed without prejudice for failure to prosecute.

25 **IT IS SO ORDERED.**

26 Dated: July 25, 2016



Donna M. Ryu
United States Magistrate Judge

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NORTHERN DISTRICT OF CALIFORNIA

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Case No. [4:16-cv-00121-DMR](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 25, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jacqueline Cao
171 Kenwood Ct.
Novato, CA 94945

John Quach
171 Kenwood Ct.
Novato, CA 94945

Max Mathesius
171 Kenwood Ct
Novato, CA 94945

Sean Cao
171 Kenwood Ct.
Novato, CA 94945

1 Tug Tig Mathesius
2 171 Kenwood Ct
3 Novato, CA 94945

4 Dated: July 25, 2016

Susan Y. Soong
Clerk, United States District Court

A handwritten signature in black ink, appearing to read 'Ivy Lerma Garcia', is written over a horizontal line.

By: _____
Ivy Lerma Garcia, Deputy Clerk to the
Honorable DONNA M. RYU

United States District Court
Northern District of California